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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ABDUL NEVAREZ and PRISCILLA  
NEVAREZ,

Plaintiffs,

v.

CITY OF SAN FRANCISCO and DOES 1-  
10, Inclusive,

Defendants.

) Case No. 19-cv-06155-SK

) Civil Rights

) *FIRST AMENDED COMPLAINT FOR*  
) *DECLARATORY AND INJUNCTIVE*  
) *RELIEF AND DAMAGES*

- ) 1. Violations of Title II of the  
) Americans with Disabilities Act of  
) 1990 (42 U.S.C. §§ 12101 et seq.)  
) 2. Violation of the Rehabilitation Act of  
) 1973 (29 U.S.C. § 794)  
) 3. Violation of California Government  
) Code Section 11135  
) 4. Violations of the California Unruh  
) Act (Cal. Civil Code § 51 et seq.)

COME NOW Plaintiffs ABDUL NEVAREZ and PRISCILLA NEVAREZ (together  
“PLAINTIFFS”) on behalf of themselves and all other similarly situated disabled persons in this  
civil rights action, and hereby complain of defendant CITY OF SAN FRANCISCO and DOES  
1-10 as follows:

**INTRODUCTION**

1. This is a civil rights action involving the lack of disabled access to the golf  
courses owned, operated, and/or leased by defendant CITY OF SAN FRANCISCO (the “CITY”)

1 and also a lack of disabled access to the buildings, structures, facilities, complexes, properties,  
2 land, developments, and/or surrounding business complexes known as “Lincoln Park Golf  
3 Course,” located at or about 300 34<sup>th</sup> Avenue, San Francisco, California 94121 (hereinafter  
4 “Lincoln Park”); “TPC Harding Park Golf Course,” located at or about 99 Harding Road, San  
5 Francisco, California 94132 (hereinafter “TPC Harding”); and “TPC Fleming Golf Course,”  
6 located also at or about 99 Harding Road in San Francisco (hereinafter “Fleming”). Upon  
7 information and belief, the CITY is an owner, operator, lessor, and/or lessee of Lincoln Park,  
8 TPC Harding, Fleming, and several other golf courses.  
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11 2. Plaintiff ABDUL NEVAREZ (sometimes “MR. NEVAREZ”) is physically  
12 disabled and requires the use of a wheelchair. MR. NEVAREZ was an avid golfer prior to the  
13 injury that rendered him disabled. He has continued golfing to remain physically active after his  
14 injury, as it is one of the only recreational physical activities that he is able to enjoy regularly  
15 with his family and friends.  
16

17 3. Plaintiff PRISCILLA NEVAREZ (sometimes “MS. NEVAREZ”) is MR.  
18 NEVAREZ’s wife. She accompanies MR. NEVAREZ golfing and often assists with making  
19 arrangements for them to golf.  
20

21 4. At all times relevant herein and continuing, PLAINTIFFS were denied equal  
22 protection of the law and were denied civil rights under state and federal law. As set forth in  
23 detail herein, PLAINTIFFS were denied rights to “full and equal” access at the CITY’s golf  
24 courses and to the benefits of “programs, services and activities” offered by the CITY because  
25 the CITY’s programs, services, and activities were not “accessible to and useable by” persons  
26 with disabilities, such as MR. NEVAREZ, who requires accessible policies and use of accessible  
27 facilities. The denial continued despite the CITY having actual notice of the inaccessible  
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1 policies, conditions, and physical structures, demonstrating its deliberate indifference and/or  
2 intentional discrimination toward PLAINTIFFS. PLAINTIFFS seek injunctive relief to require  
3 the CITY to make its specified facilities accessible to disabled persons and to ensure that the  
4 “programs, services and activities” offered by the CITY be provided in a non-discriminatory  
5 manner to mobility disabled persons, including but not limited to: providing and maintaining safe  
6 accessible golf carts adequate to serve all golf courses that the CITY owns, operates, and/or  
7 leases; modifying its programs, services, and activities to provide for accessible tee time booking  
8 policies and procedures for all golf courses that the CITY owns, operates, and/or leases; and  
9 removing all architectural barriers at all golf courses that the CITY owns, operates, and/or leases.  
10 PLAINTIFFS seek damages and injunctive relief requiring provision of access under the  
11 Americans with Disabilities Act of 1990 (“ADA”) and Rehabilitation Act of 1973 and injunctive  
12 relief for full and equal access and statutory damages under California law. PLAINTIFFS also  
13 seek declaratory relief and recovery of reasonable statutory attorney fees, litigation expenses and  
14 costs under federal and state law.  
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### 18 **JURISDICTION AND VENUE**

19 5. This Court has jurisdiction of this action pursuant to 28 USC § 1331 for  
20 violations of the ADA, 42 USC §§ 12101 *et seq.* Pursuant to supplemental jurisdiction, attendant  
21 and related causes of action arising from the same facts are also brought under the Unruh Civil  
22 Rights Act, California Civil Code §§ 51, 52.  
23

24 6. Venue is proper in this court pursuant to 28 USC § 1391(b) and is founded on the  
25 fact that the real property which is the subject of this action is located in this District and that  
26 PLAINTIFFS’ causes of action arose in this District.  
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1           7.       This case should be assigned to the San Francisco Division of the Northern  
2 District of California, as the real property which is the subject of this action is located in this  
3 intradistrict and PLAINTIFFS' causes of action arose in this intradistrict.  
4

5                               **PARTIES**

6           8.       At all times relevant to this Complaint, MR. NEVAREZ is qualified as a  
7 "physically disabled person" and a "person with a disability," within the meaning of the ADA, §  
8 504 of the Rehabilitation Act of 1973, and Unruh Civil Rights Act. MR. NEVAREZ's right leg  
9 is amputated above the knee and he has significant nerve damage in his left leg and left arm. He  
10 requires use of a wheelchair for mobility. He possesses a disabled parking placard and/or license  
11 plate issued by the State of California, entitling him to park in designated accessible and van-  
12 accessible parking spaces.  
13

14           9.       Plaintiff PRISCILLA NEVAREZ does not have a disability, but she assisted MR.  
15 NEVAREZ with and accompanied him to all the events described in this Complaint.  
16

17           10.      The CITY and DOES 1-5 are public entities subject to Title II of the ADA, the  
18 Rehabilitation Act of 1973, and to all other legal requirements referred to in this Complaint, who  
19 are the owners, operators, lessors, and/or lessees of Lincoln Park, TPC Harding, Fleming, and  
20 other CITY golf courses. Defendant DOES 6-10 are employees and/or agents of the CITY and/or  
21 Lincoln Park, TPC Harding, or Fleming. The true names or capacities, whether individual,  
22 corporate, associate, or otherwise of defendants DOES 1-10 are unknown to PLAINTIFFS, who  
23 therefore sue said defendants by such fictitious names. PLAINTIFFS are informed and believe,  
24 and thereon allege, that each of the fictitiously named defendants is in some manner legally  
25 responsible for the events and happenings herein referred to, which caused injury and damages to  
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1 PLAINTIFFS as herein alleged. PLAINTIFFS pray for leave of court to amend this Complaint to  
2 show such true names and capacities when the same have been ascertained.

3 11. PLAINTIFFS do not know the relative responsibilities of the CITY and DOES 1-  
4 10 in the ownership and operation of the facilities herein complained of, but is informed and  
5 believes, and on such information and belief alleges, that at all times mentioned herein,  
6 defendants, and each of them, were the agents, servants, employees, and representatives of each  
7 of the other defendants, and performed all acts and omissions stated herein within the scope of  
8 such agency or employment or representative capacity, and/or as part of a joint venture and  
9 common enterprise with one or more of the other defendants, and are responsible in some  
10 manner for the acts and omissions of the other defendants in proximately causing the damages  
11 complained of herein. All actions alleged herein were done with the knowledge, consent  
12 approval and ratification of each of the defendants herein, including their managing agents,  
13 owners, and representatives.

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16 **FACTUAL ALLEGATIONS**

17 12. The CITY has discriminated against PLAINTIFFS because its golf courses and  
18 policies related to its golf courses do not comply with the requirements of the ADA,  
19 Rehabilitation Act of 1973, and Unruh Civil Rights Act. The CITY has failed and refused to  
20 provide full and equal access to the services, privileges, benefits and advantages that it provides  
21 to nondisabled persons at its golf courses, including but not limited to Lincoln Park, TPC  
22 Harding, and Fleming. The CITY failed to make reasonable accommodations for PLAINTIFFS,  
23 even though doing so is feasible and readily achievable given the CITY's resources, and the  
24 CITY cannot demonstrate that making the requested accommodations would fundamentally alter  
25 the nature of the services, programs, or activities offered at its golf courses.  
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1           13.     The CITY has also discriminated against PLAINTIFFS by failing to remove  
2 numerous architectural barriers at Lincoln Park, TPC Harding, Fleming, and its other golf  
3 courses that prevent wheelchair users from golfing at the courses and utilizing the services  
4 offered in the buildings serving the courses.  
5

6           14.     The CITY has knowingly and intentionally denied persons with mobility  
7 disabilities the full and equal enjoyment of its businesses, services, privileges, advantages, and  
8 accommodations. The CITY has engaged in this discriminatory conduct despite the fact that its  
9 services, business practices, contracts, and contractual relationships could easily be brought into  
10 compliance with the ADA, Rehabilitation Act of 1973, and the Unruh Civil Rights Act, and  
11 despite the fact that the CITY is and has been fully aware that its conduct and business practices  
12 have and continue to cause harm to persons with mobility disabilities including segregation and  
13 exclusion. The foregoing violations of the ADA, Rehabilitation Act of 1973, and Unruh Civil  
14 Rights Act are illustrated by the experiences of PLAINTIFFS, which are set forth in the  
15 paragraphs below.  
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18           15.     PLAINTIFFS have attempted to visit golf courses owned, operated, and/or leased  
19 by the CITY (together the “CITY’s golf courses” or “CITY golf courses”) as paying customers  
20 multiple times in the last two years and encountered barriers (both physical and intangible) that  
21 interfered with, if not outright denied, their ability to use and enjoy the goods, services,  
22 privileges and accommodations offered at the CITY’s golf courses.  
23

24           16.     On August 24, 2018, PLAINTIFFS called Lincoln Park to confirm that it would  
25 have an accessible golf cart available for MR. NEVAREZ to use for an August 25, 2018 at 9:50  
26 a.m. tee time that PLAINTIFFS had scheduled online on August 20, 2018. However, they were  
27 not able to reach anyone, as the phone kept ringing without being answered every time they  
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1 called. After searching online, they found contact information for the ADA Facility Coordinator  
2 for the CITY's Recreation and Parks Department (the "Department"), Paulina Araica, and called  
3 Ms. Araica to request a fully accessible golf cart for MR. NEVAREZ. Ms. Araica explained that  
4 the only accessible cart they had was the cart depicted on the Department's website under  
5 "Facility Accessibility" for golf courses. PLAINTIFFS explained to Ms. Araica that the  
6 "accessible" golf cart on the Department's website is a SoloRider golf cart, which requires  
7 substantial upper body strength and hand/arm function in order to operate, and as a result, is not  
8 accessible to many people with mobility disabilities, such as MR. NEVAREZ. PLAINTIFFS had  
9 no choice but to cancel their reserved tee time. They asked Ms. Araica to follow up with them.  
10 PLAINTIFFS confirmed their August 24th call with Ms. Araica via email on August 27, 2018,  
11 and again asked her to get back to them as soon as possible about whether the Department would  
12 obtain a fully-accessible golf cart, such as a ParaGolfer, so that MR. NEVAREZ could golf at  
13 Lincoln Park and other CITY golf courses.

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16 17. After receiving no response to their August 24th email, PLAINTIFFS emailed  
17 Ms. Araica on August 31, 2018. Ms. Araica responded via email on September 4, 2018. She  
18 indicated that she was forwarding PLAINTIFFS' email requests to the "ADA Coordinator for  
19 Program Access" and "Director of Property Management, Permits and Reservations" for review.  
20 Ms. Araica promised that they would investigate and contact PLAINTIFFS promptly with their  
21 findings. Also on September 4th and shortly after Ms. Araica's email, PLAINTIFFS received an  
22 email from Lucas Tobin, the "Supervisor for Therapeutic Recreation and Inclusion Services" for  
23 the Department, who indicated that he received PLAINTIFFS' inquiry and would be working  
24 with the CITY's Mayor's Office on Disability "to look into it."  
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1           18.     On September 10, 2018, PLAINTIFFS followed up via email with Mr. Tobin, Ms.  
2 Araica, and Dana Ketcham, who was copied on Ms. Araica's and Mr. Tobin's earlier emails to  
3 PLAINTIFFS. PLAINTIFFS noted that they would like to golf at the CITY's golf courses while  
4 the area enjoys nice weather. PLAINTIFFS did not receive a prompt response to their email.  
5

6           19.     After almost two weeks of no response to their September 10th email,  
7 PLAINTIFFS followed up via email on September 23, 2018 to Mr. Tobin, Ms. Araica, and Ms.  
8 Ketchum. PLAINTIFFS received no response until over a week after that, when Mr. Tobin  
9 emailed them on October 1, 2018 to confirm that the Department was going to upgrade  
10 accessible golf equipment and that it was "beginning that process by researching vendors,  
11 options, how many units [the Department] [ ] would need, etc." Mr. Tobin also noted that once  
12 the Department answers these questions, that it would take time to purchase equipment and for  
13 the vendor to deliver. He assured PLAINTIFFS that the Department was prioritizing upgrading  
14 the equipment, but he also wanted to manage expectations that the upgrades would not "happen  
15 overnight."  
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18           20.     PLAINTIFFS received no response to their October 1st email for three months.  
19 On January 2, 2019, they finally received an email from Mr. Tobin confirming that the  
20 Department was "still moving forward with efforts to purchase ParaGolfer carts for [the  
21 Department's] [ ] golf courses." Mr. Tobin noted that the "plan is to purchase two ParaGolfers,  
22 to be housed at Harding Park, and transported to other courses with sufficient notice." He  
23 assured PLAINTIFFS that he would keep them apprised regarding the Department's progress in  
24 acquiring the ParaGolfers.  
25

26           21.     On June 20, 2019, after almost six months of no contact from the CITY,  
27 PLAINTIFFS emailed Mr. Tobin to determine the status of the CITY's efforts. In a responsive  
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1 email, Mr. Tobin confirmed that the Department purchased and received two ParaGolfer carts for  
2 use at the CITY's golf courses, and that one ParaGolfer will be housed at TPC Harding and one  
3 at Lincoln Park. Mr. Tobin also noted that "providing at least five business days' advance notice  
4 for transporting [ParaGolfers] will help ensure availability."

5  
6 22. PLAINTIFFS emailed Mr. Tobin on August 8, 2019 to ask why it would take five  
7 days of notice to transport a ParaGolfer. PLAINTIFFS emphasized that with their schedule, they  
8 often do not know if they are able to golf until the morning of, and they would like to be able to  
9 golf any open tee time that is available when their schedule allows. In a responsive email, Mr.  
10 Tobin clarified that the five-business-day notice requirement applies only if a ParaGolfer has to  
11 be moved from Lincoln Park or TPC Harding. Thus, if PLAINTIFFS needed one ParaGolfer  
12 only at either Lincoln Park or TPC Harding and no one else was scheduled to use the ParaGolfer  
13 being stored there, PLAINTIFFS could make a last-minute tee time at either of those courses  
14 with a ParaGolfer.  
15

16  
17 23. On or about August 19, 2019, PLAINTIFFS booked a tee time online to golf at  
18 Lincoln Park at 9:00 a.m. on August 23, 2019. They called Lincoln Park to confirm that they  
19 would need the ParaGolfer, and the Lincoln Park employee they spoke with, "Lance," said that  
20 someone from the CITY has to come out and that process usually takes three days. He told  
21 PLAINTIFFS he would call them back. When "Lance" called back, he left a message that the  
22 ParaGolfer would be available for PLAINTIFFS for their tee time; that "Jerry" would be their  
23 contact that day; and that a representative from the CITY, "Lyn," would be also be at Lincoln  
24 Park.  
25

26 24. On August 22, 2019, PLAINTIFFS changed their August 23rd tee time online  
27 from 9:00 a.m. to 7:30 a.m. They tried to call Lincoln Park four times to let the course know they  
28

1 had changed their tee time and to ensure the ParaGolfer would be available at their new tee time.  
2 On all four attempts to call, PLAINTIFFS received a busy signal or were directed to the course's  
3 voice mail, on which they left a message each time. That same day, August 22nd, PLAINTIFFS  
4 emailed Mr. Tobin to alert him of the difficulties they had contacting Lincoln Park and to  
5 confirm the ParaGolfer would be ready for their new tee time. Mr. Tobin was out of the office at  
6 the time, so PLAINTIFFS' email was forwarded to Lyn Nelson, also with the Department. Ms.  
7 Nelson responded to PLAINTIFFS that the ParaGolfer would be available for their new tee time  
8 and also noted, "I believe Lance informed you that it is fine for you to park in an area we refer to  
9 as 'the courtyard' adjacent to the putting green and clubhouse."  
10  
11

12 25. Lance never informed PLAINTIFFS of any parking, and when PLAINTIFFS  
13 arrived at Lincoln Park on August 23rd, they did not see parking in or near a "courtyard." They  
14 drove to two parking lots directly across the street (i.e. Legion of Honor Drive) from Lincoln  
15 Park, however, PLAINTIFFS did not see any accessible parking spaces in either lot or any  
16 signage indicating where accessible parking was located. PLAINTIFFS parked their truck in a  
17 regular parking stall in one of the two lots and MS. NEVAREZ got out of the truck to locate an  
18 accessible path of travel from the parking lots to the main Lincoln Park building ("Clubhouse")  
19 for MR. NEVAREZ.  
20

21 26. MS. NEVAREZ saw that the asphalt where the parking lots exit onto Legion of  
22 Honor Drive was in serious disrepair – the asphalt dipped down in several locations and had  
23 many cracks. When she walked across the street to the Clubhouse, she did not see an accessible  
24 entrance to the Clubhouse, including the Pro Shop that is part of the Clubhouse. The entrance to  
25 the Pro Shop had a step with no ramp, and MS. NEVAREZ did not see any ramps or another  
26 way for MR. NEVAREZ to enter the building, so MS. NEVAREZ determined that she would  
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1 have to enter the Clubhouse on her own to pay for both of them. She also determined that MR.  
2 NEVAREZ would not be able to access the restaurant in the Clubhouse, the Lincoln Park Bar &  
3 Grill. She returned to the truck and told MR. NEVAREZ that she did not see any ramp that he  
4 would be able to use at the Clubhouse.  
5

6 27. MS. NEVAREZ unloaded MR. NEVAREZ's wheelchair from the back of the  
7 truck, and he transferred onto his wheelchair. A woman parked nearby approached them and  
8 introduced herself as Lyn Nelson. She told PLAINTIFFS that they could move their truck, but  
9 PLAINTIFFS noted that they had already unloaded, and MR. NEVAREZ was situated in his  
10 wheelchair.  
11

12 28. PLAINTIFFS and Ms. Nelson attempted to exit the parking lot to get to the  
13 Clubhouse. However, MR. NEVAREZ's front wheels of his wheelchair got stuck in the cracks in  
14 the asphalt where the parking lot exit abuts the street, and he almost fell out of this wheelchair.  
15 Luckily, he caught himself. He tried to "pop" the front wheels out of the cracks, but he got stuck  
16 again and almost fell again. Once PLAINTIFFS managed to get MR. NEVAREZ's wheelchair  
17 out of the parking lot, they proceeded to cross the street. A car was approaching at the time, and  
18 MS. NEVAREZ had to yell out to stop MR. NEVAREZ and Ms. Nelson from proceeding since  
19 they were not in a crosswalk and the car was not stopping. Traffic in this area was -- and upon  
20 information and belief continues to be -- dangerous for pedestrians and particularly anyone with  
21 a mobility disability, as crosswalk designations and signage were/are inadequate to alert drivers  
22 of pedestrians in this area or to alert pedestrians of an accessible path of travel.  
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25 29. Upon PLAINTIFFS and Ms. Nelson approaching the Clubhouse, a Lincoln Park  
26 employee brought out the ParaGolfer and MR. NEVAREZ transferred into the ParaGolfer. MS.  
27 NEVAREZ asked Ms. Nelson where the restrooms were. Ms. Nelson stated that the men's  
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1 restroom was downstairs and the only way to access it was to go down the stairs, confirming that  
2 MR. NEVAREZ would not be able to use the restroom in the Clubhouse even if he could  
3 somehow enter the building. Ms. Nelson stated that there was also a restroom on the 6th hole.  
4 She said the women's restroom was inside the Clubhouse and that she would open it up for MS.  
5 NEVAREZ. MR. NEVAREZ did not have to use the restroom at that time but did shortly after  
6 this exchange with Ms. Nelson. However, knowing there was no accessible entrance to the  
7 Clubhouse and that the men's restroom was down the stairs, he was unable to use the restroom.  
8

9 30. MS. NEVAREZ was forced to go in and pay by herself since MR. NEVAREZ  
10 could not enter the Pro Shop with his wheelchair.  
11

12 31. Per Ms. Nelson's suggestion, MS. NEVAREZ walked to get PLAINTIFFS' truck  
13 to move it to an area in front of the Pro Shop that Ms. Nelson referred to as the "Courtyard."  
14 Moving the truck in this manner was very awkward and embarrassing for PLAINTIFFS because  
15 the "Courtyard" space was not constructed to be a parking area and PLAINTIFFS' truck took up  
16 the entire area in front of the Clubhouse and Pro Shop. Nonetheless, MS. NEVAREZ backed the  
17 truck up all the way to the Pro Shop.  
18

19 32. The Pro Shop had "Cart Path Only" signs, indicating that golf carts are to remain  
20 on cart paths only, but a Lincoln Park employee gave PLAINTIFFS a blue flag so that they could  
21 take the carts on the course.  
22

23 33. The grass was wet since it was first thing in the morning. PLAINTIFFS made it to  
24 the 5th hole where MR. NEVAREZ started to experience operation issues with the ParaGolfer.  
25 He teed off on the 5th hole, which was a flat surface and hit the ball into the fairway. Then the  
26 ParaGolfer started to malfunction. The steering did not work properly, and MR. NEVAREZ  
27 could not go straight forward. The back tire was pulling him left or right when he tried to go  
28

1 forward. MS. NEVAREZ noticed the ParaGolfer's rear tire looked like it had low tire pressure.  
2 Upon information and belief, the other tires had low tire pressure as well. With the tire(s) being  
3 low, the ParaGolfer had to work extra hard on the wet grass and appeared to overheat.  
4

5 34. With the ParaGolfer out of commission, MR. NEVAREZ was forced to transfer  
6 into the golf cart that MS. NEVAREZ was driving, and he almost fell while transferring.  
7 PLAINTIFFS drove back to the Pro Shop and told an employee there that the ParaGolfer was on  
8 the 5th hole, its rear tire was low, and it wasn't working. PLAINTIFFS pulled up to their truck,  
9 both very upset.  
10

11 35. Earlier while they were getting ready to go out and golf, someone put MR.  
12 NEVAREZ's wheelchair in the bed of PLAINTIFFS' truck. This made it difficult to get the  
13 wheelchair out since the bed of the truck was backed up with no room for the tailgate to open to  
14 unload the wheelchair properly because of the quirky "Clubhouse" parking situation. MS.  
15 NEVAREZ was forced to maneuver MR. NEVAREZ's wheelchair out of the bed of the truck  
16 without being able open the tailgate and get behind it to unload properly. She helped him get out  
17 of the golf cart and unloaded his clubs and all of their stuff back in the truck.  
18

19 36. Once PLAINTIFFS were loaded up, Ms. Nelson walked up and asked what  
20 happened. PLAINTIFFS told her that the tire was low on the ParaGolfer and it stopped working  
21 on the 5th hole. She apologized and asked if they wanted to wait and see what was going on with  
22 the ParaGolfer. However, by that time, PLAINTIFFS were already loaded up and MR.  
23 NEVAREZ was exhausted, embarrassed, emotionally deflated, and too upset to golf.  
24 PLAINTIFFS thanked Ms. Nelson and told her they would like to come back once the  
25 ParaGolfer was fixed. They let Ms. Nelson know that MS. NEVAREZ's schedule varies and that  
26 they would have to determine when they would be able come out again but that they would like  
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1 to come back soon. They also told her that they may not know five days in advance if they are  
2 able to golf but would like to be able to golf as soon as they determine their availability if the  
3 ParaGolfer is available at that time. They suggested that Lincoln Park fill up the ParaGolfer's  
4 tires and take it out on a drive around the course to ensure it works properly. Lincoln Park issued  
5 a refund back to MS. NEVAREZ's credit card.  
6

7 37. A few days later, PLAINTIFFS checked their schedule and decided that their best  
8 golf day would be on Labor Day. They booked a tee time online at Lincoln Park for September  
9 2, 2019 at 9:00 a.m.  
10

11 38. Ms. Nelson sent PLAINTIFFS an email on August 27, 2019, in which she said  
12 that she noticed they made a reservation for Labor Day at Lincoln Park but that the Department  
13 was:

14 assessing the cart and whether it can effectively operate at Lincoln  
15 due to the steepness of the slopes.. [sic] We do not at this point  
16 have confidence in its operation and are very disappointed. We are  
17 trying to determine a path of travel that the Para-Golfer can safely  
18 operate.  
19

20  
21 We believe that it would operate better at Fleming (Harding is still  
22 booked solid until after 2:10 as of now) and can make a tee time  
23 for you at 9:00 if you would prefer.  
24

25 The same day, PLAINTIFFS responded via email to Ms. Nelson and confirmed that they would  
26 go ahead and play at Fleming on Labor Day at 9:00 a.m. Upon information and belief, Fleming is  
27 a nine-hole golf course that was added to the interior of TPC Harding in 1961. The same  
28

1 amenities (e.g. parking lots, Pro Shop, restaurant, etc.) service both TPC Harding and Fleming.  
2 On August 28, 2019, Ms. Nelson confirmed that the ParaGolfer would be available at Fleming  
3 for PLAINTIFFS for their tee time on Labor Day.  
4

5 39. When PLAINTIFFS checked in for their tee time at Fleming on Labor Day, they  
6 paid \$38 per person for nine (9) holes of golf, whereas they would have paid \$46 per person for  
7 eighteen (18) holes at Lincoln Park. PLAINTIFFS were frustrated that they had to pay almost the  
8 same price for half of the number of holes because they were forced to golf at Fleming instead of  
9 Lincoln Park.  
10

11 40. While golfing at Fleming on Labor Day, PLAINTIFFS noticed the rear tire of the  
12 ParaGolfer had low tire pressure as they had experienced earlier at Lincoln Park. They alerted an  
13 employee, who filled the tires. PLAINTIFFS golfed at Fleming as scheduled with no problem.  
14

15 41. On September 16, 2019, PLAINTIFFS emailed Ms. Nelson to give her four days  
16 of notice that they intended to golf at Fleming with friends on September 20th and would need a  
17 ParaGolfer that day for MR. NEVAREZ. Ms. Nelson replied the same day that she had “reached  
18 out to Harding to confirm arrangements” and would let them know “tomorrow.” However, Ms.  
19 Nelson did not confirm arrangements as promised. Fearful that they would not be able to golf as  
20 scheduled, PLAINTIFFS emailed Ms. Nelson on September 19th to confirm that a ParaGolfer  
21 would be available for MR. NEVAREZ. Ms. Nelson responded that the ParaGolfer would be  
22 ready for them for their tee time the next day.  
23

24 42. When PLAINTIFFS arrived at Fleming/TPC Harding on September 20th, all of  
25 the wheelchair accessible parking spaces were taken so they were forced to park further away  
26 from the entrance to the main buildings. Since MR. NEVAREZ requires a van-accessible  
27 parking stall, PLAINTIFFS were forced to take up two parking spaces. They ended up a far  
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1 distance from the entrance, so MS. NEVAREZ carried MR. NEVAREZ's golf clubs and their  
2 bag while they did their best to negotiate safely through the parking lot with cars driving in and  
3 out around them, since the parking lot did not have a marked or otherwise obvious pedestrian  
4 path of travel.

5  
6 43. Exhausted from carrying all of their gear, MS. NEVAREZ left the gear with MR.  
7 NEVAREZ to watch outside while she checked both of them in so that she would not have to  
8 carry the items all the way into the Pro Shop. After checking them in and requesting the  
9 ParaGolfer be brought out, she went outside to wait with MR. NEVAREZ. Despite Ms. Nelson's  
10 assurances that the ParaGolfer would be ready for their tee time, PLAINTIFFS waited at least  
11 fifteen (15) minutes before MS. NEVAREZ went back into the Pro Shop to ask about the status  
12 of the ParaGolfer. A few minutes later, an employee finally brought out the ParaGolfer and MR.  
13 NEVAREZ transferred to it. PLAINTIFFS and their friends proceeded to golf at Fleming.

14  
15 44. MS. NEVAREZ was given a regular golf cart to use during their tee time at  
16 Fleming. However, regular golf carts are equipped with GPS tracking that prohibits the cart from  
17 going on the course. TPC Harding/Fleming employees disabled the GPS for MS. NEVAREZ's  
18 golf cart when PLAINTIFFS golfed at Fleming on Labor Day, but employees failed to disable  
19 the GPS for MS. NEVAREZ on September 20th. MS. NEVAREZ found it extremely difficult  
20 and exhausting to golf with and assist MR. NEVAREZ that day, because she was forced to park  
21 her cart off to the side and run to where the ball was throughout the day.

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23  
24 45. On September 24, 2019, PLAINTIFFS emailed Ms. Nelson to ask if the  
25 upcoming PGA Championship at TPC Harding (the "Tournament") would be accessible so that  
26 they can attend, including MR. NEVAREZ being able to use a ParaGolfer during the event and  
27 the event having accessible paths of travel, viewing areas at each hole, and parking. Ms. Nelson  
28



1 did not respond, so PLAINTIFFS emailed her again on October 6, 2019 to follow up so that they  
2 could finalize plans to attend the Tournament with their friends. Ms. Nelson responded on  
3 October 6th and copied Mr. Tobin, explaining that the Department was not running the  
4 Tournament, that the Department needed to look into what the PGA's normal accessibility is,  
5 and that site plans were in the process of being determined. PLAINTIFFS responded the next day  
6 that the Tournament needs to be fully accessible per ADA laws, not where the PGA decides it  
7 will allow access. On October 8th, Mr. Tobin chimed in on the email thread, apologizing for the  
8 error in Ms. Nelson's email, noting:

10           The tournament plan must meet ADA requirements and will not be  
11           governed by what PGA of America has done at other sites.

13           However, we need their overall site plan, including areas that are  
14           not open to the public, to develop a full plan. We don't have those  
15           yet. We will keep you updated as we have more information.

17           At this point we do not plan to make the Paragolfers available  
18           other than for golf play.

20 PLAINTIFFS have not heard back from Mr. Tobin, Ms. Nelson, or anyone from the Department  
21 about the accessibility at the Tournament.

22           46.     In another email dated September 24, 2019, PLAINTIFFS asked Ms. Nelson  
23           when they would be able to return to Lincoln Park. Ms. Nelson did not respond, so PLAINTIFFS  
24           emailed her again on October 6, 2019 to follow up. They were particularly disappointed by Ms.  
25           Nelson's failure to respond because the weather in the Bay Area was particularly beautiful at the  
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1 time, and MR. NEVAREZ's friends invited him to join them to golf but PLAINTIFFS were  
2 unable to join because they were waiting for a response from Ms. Nelson.

3 47. Ms. Nelson responded via email on October 6th, explaining that they are  
4 "working on some issues with the Para Golfer." In her email, Ms. Nelson blamed the failure of  
5 the ParaGolfer at Lincoln Park on "slopes of the some of the fairways being in excess of 17  
6 degrees." She indicated that Fleming has the "flattest topography" and that they have asked  
7 customers to play that course until they can "determine alternate routes that avoid inclines and  
8 declines in excess of 17 degrees."  
9

10 48. In a reply email also on October 6th, PLAINTIFFS clarified that the ParaGolfer  
11 died on a flat area when MR. NEVAREZ was teeing off, not on a slope. PLAINTIFFS explained  
12 that the issues they observed with the ParaGolfer were maintenance issues, not terrain issues.  
13 PLAINTIFFS noted that over a month had passed since they were last at Lincoln Park and yet  
14 they continued to be ignored. They asked if they were being ignored because Lincoln Park's  
15 facilities and restrooms were inaccessible, they reiterated that they were frustrated by missing out  
16 on golfing with friends while the weather was nice, and they confirmed that they would like to  
17 golf at all of the CITY's golf courses, not just Fleming. PLAINTIFFS did not receive a response  
18 from Ms. Nelson or anyone from the Department.  
19

20 49. In November 2019, although PLAINTIFFS wanted to golf at Lincoln Park,  
21 because of the Department's failure to confirm when PLAINTIFFS would get access to a  
22 ParaGolfer at Lincoln Park, PLAINTIFFS scheduled a tee time at TPC Harding. When  
23 PLAINTIFFS checked tee times online, morning tee times at TPC Harding were approximately  
24 \$127 per person versus \$48 per person for morning tee times the same day at Lincoln Park.  
25 PLAINTIFFS ended up scheduling the first tee time on November 21, 2019 at a lower rate at  
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1 TPC Harding at 1:10 p.m., which cost \$85 per person. The same tee time at Lincoln Park would  
2 have cost them \$31 per person.

3 50. When booking the November 21st tee time, PLAINTIFFS noted in their  
4 reservation that MR. NEVAREZ would need a ParaGolfer. MS. NEVAREZ called TPC  
5 Harding's Pro Shop to confirm the ParaGolfer would be available for their tee time. She spoke  
6 with a female employee who confirmed the ParaGolfer would be ready and available for their  
7 use on November 21st.  
8

9 51. CITY representatives initially objected to PLAINTIFFS' request for a tee time at  
10 TPC Harding, indicating concerns that the ParaGolfer could not handle some of the slopes at  
11 TPC Harding. CITY representatives tried to convince PLAINTIFFS to golf at Fleming instead.  
12 Nonetheless, PLAINTIFFS continued to request a tee time at TPC Harding, given the publicity  
13 that TPC Harding has received since partnering with the PGA to bring the Tournament to TPC  
14 Harding and the fact that they had already golfed at Fleming twice. CITY representatives noted  
15 that PLAINTIFFS may be able to golf at TPC Harding, but with restrictions on where they could  
16 go on the course.  
17

18 52. On November 21, 2019, PLAINTIFFS went to TPC Harding for their tee time.  
19 PLAINTIFFS were unable to find disabled accessible parking near the entrance to the main  
20 buildings that serve TPC Harding and Fleming. They ended up double-parking in an area near a  
21 cement island in the parking lot.  
22

23 53. PLAINTIFFS arrived early to see if they could get an earlier tee time. However,  
24 when PLAINTIFFS entered the Pro Shop to check in, store racks obstructed MR. NEVAREZ's  
25 path to the check-in area. The check-in counter did not have an unobstructed lowered section, so  
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1 MR. NEVAREZ was unable to check-in himself. MS. NEVAREZ was forced to check in for  
2 both of them.

3 54. PLAINTIFFS were able to rebook for an 11:00 a.m. tee time and a TPC Harding  
4 employee told them there would be no restrictions on where they could go on the course with the  
5 ParaGolfer that day. This last-minute news was disappointing to PLAINTIFFS, as they had two  
6 friends who declined to join them that day because of the restrictions the CITY had insisted upon  
7 earlier in order to golf at TPC Harding. PLAINTIFFS were paired with two other gentlemen for  
8 the 11:00 a.m. tee time.  
9

10 55. As with prior visits to Fleming, on November 21st, PLAINTIFFS requested that  
11 the GPS for MS. NEVAREZ's golf cart be disabled so that she could properly assist MR.  
12 NEVAREZ. However, the GPS system of MS. NEVAREZ's golf cart still limited her access to  
13 areas of the course. She was exhausted by having to run between her cart on the side and to assist  
14 MR. NEVAREZ with each of his shots.  
15

16 56. After PLAINTIFFS were done with their round of golf, MS. NEVAREZ walked  
17 to her and MR. NEVAREZ's truck and drove it to the entrance to the main buildings where MR.  
18 NEVAREZ was waiting, because TPC Harding does not allow the ParaGolfer to be operated in  
19 the parking lot. MR. NEVAREZ exited the ParaGolfer and got into his wheelchair.  
20

21 57. PLAINTIFFS then went to the restaurant to grab a drink at the bar, but the bar did  
22 not have an unobstructed lowered section that MR. NEVAREZ could access. Disappointed, MS.  
23 NEVAREZ bought a Gatorade drink from the bar and PLAINTIFFS left.  
24

25 58. In addition to the numerous problems with the CITY's policies at its golf courses  
26 (including without limitation tee time policies and policies regarding use of the ParaGolfer and  
27 regular golf carts accompanying ParaGolfers), upon information and belief, the buildings and  
28

1 amenities that serve TPC Harding and Fleming are inaccessible in several respects, including  
2 without limitation: (a) a lack of fully accessible parking areas; (b) a lack of an accessible path of  
3 travel from parking to buildings, facilities, or elements of the courses; (c) a lack of an accessible  
4 path of travel connecting the club house and practice area; (d) a lack of requisite directional  
5 signage; (e) no access aisle serving an accessible passenger drop-off and loading area; (f) no  
6 accessible section of counter in the Pro Shop; (g) inaccessible elements in the men's restroom;  
7 (h) a lack of requisite accessible seating locations in the restaurant; and (i) an obstructed lowered  
8 section of the counter at the bar in the restaurant.  
9

10  
11 59. In addition to numerous problems with the CITY's policies at its golf courses  
12 (including without limitation tee time policies and policies regarding use of the ParaGolfer and  
13 regular golf carts accompanying ParaGolfers), upon information and belief, the buildings and  
14 amenities that serve Lincoln Park are inaccessible in several respects, including without  
15 limitation: (a) a lack of accessible parking; (b) a lack of an accessible path of travel from parking  
16 to buildings, facilities, or elements of the course; (c) a lack of accessible entrances to the  
17 Clubhouse and other buildings that serve the course; (d) multiple access barriers within the  
18 Clubhouse, Pro Shop, and restaurant if a wheelchair user were able to enter the building; (e) a  
19 lack of accessible restrooms; and (f) a lack of requisite directional signage.  
20

21  
22 60. Upon information and belief, the other CITY golf courses, including Golden Gate  
23 Park Golf Course, Gleneagles Golf Course, and Sharp Park Golf Course have similar  
24 architectural access barriers and policy barriers.

25 61. PLAINTIFFS would like to golf at all of the CITY's golf courses. Each golf  
26 course has unique characteristics that make it different from the others. For example, each course  
27 has a different level of difficulty, different terrain, different weather given its location, different  
28

1 amenities (e.g. dining options); and unique views (e.g. Lincoln Park has iconic, stunning views  
2 of the Golden Gate Bridge from the 17th hole).

3 62. PLAINTIFFS allege continuous and ongoing discrimination. They want to – and  
4 plan to – golf at Lincoln Park, TPC Harding, Fleming, and all of the CITY’s golf courses, and  
5 they are frustrated and anxious for the CITY to provide access to safe and well-maintained  
6 accessible golf carts; to provide reasonable modification in policies, practices, and procedures, as  
7 alleged herein; and remove architectural barriers so that they may golf the at all of the CITY’s  
8 golf courses. PLAINTIFFS will continue to be injured by being deterred from visiting the  
9 CITY’s golf courses for all times occurring after the filing of this Complaint to the time of final  
10 judgment.  
11

12 63. The barriers described above are only those that PLAINTIFFS encountered. They  
13 are presently unaware of other barriers which may in fact exist at Lincoln Park, TPC Harding,  
14 Fleming, and other CITY golf courses and relate to Mr. NEVAREZ’s disabilities. PLAINTIFFS  
15 will seek to amend this Complaint once such additional barriers are identified, as it is their  
16 intention to have all barriers removed which exist at all CITY golf courses that limit full and  
17 equal access for persons with mobility disabilities.  
18

19 64. PLAINTIFFS’ numerous complaints and claims to the CITY’s, Lincoln Park’s,  
20 and TPC Harding/Fleming’s employees and representatives have been ignored or mishandled.  
21 PLAINTIFFS allege that it would be a futile gesture to provide further notices of violations  
22 relating to their continued, attempted visits and deterrence, which are certain to occur on a  
23 regular basis following the filing of this Complaint. Therefore, PLAINTIFFS will seek to  
24 supplement this Complaint at the time of trial as to subsequent events, according to proof.  
25  
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1           65.     The CITY knew, or should have known, that these policies, elements, and  
2 physical structures were inaccessible, violate state and federal law, and interfere with or deny  
3 access to the physically disabled. Moreover, upon information and belief, the CITY has the  
4 financial resources to remove these barriers and implement policy changes without much  
5 difficulty or expense and make its golf courses accessible to the physically disabled. To date,  
6 however, the CITY refuses to remove these barriers and make such changes.

8           66.     Upon information and belief, the CITY constructed and/or altered each of its golf  
9 courses without complying with federal or state access requirements/standards in effect at the  
10 time of the alterations and/or new construction. For example, upon information and belief, TPC  
11 Harding underwent a \$16 million restoration featuring a complete re-design of the course.  
12 Additionally, the Golden Gate Park Golf Course erected a new temporary structure in July 2018  
13 after the original clubhouse was destroyed by a fire on July 2, 2018.

15           67.     As a result of the CITY's actions and failures to act, as a result of the failure to  
16 provide disabled access, and as a result of the CITY's intentional discrimination and deliberate  
17 indifference, PLAINTIFFS have suffered a denial of their civil rights, physical injury,  
18 psychological and emotional discomfort, pain and suffering, denial of rights to full and equal  
19 access to public facilities, and programmatic access, all to their general, special, and statutory  
20 damages. MR. NEVAREZ has, on the occasion of each such denial of access, encountered  
21 barriers to full and equal access which have caused him difficulty, discomfort, and  
22 embarrassment. PLAINTIFFS have been required to seek legal assistance, and seek statutory  
23 attorney fees, litigation expenses, and costs, pursuant to federal and state law.  
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1           68.     TORT CLAIMS FILED – On February 21, 2019, PLAINTIFFS served claims on  
2 the CITY for all events through January 2, 2019. The CITY rejected PLAINTIFFS’ claims on  
3 March 29, 2019.

4           69.     SECOND SET OF TORT CLAIMS FILED – On September 27, 2019,  
5 PLAINTIFFS sent claims to the CITY for all events from January 3, 2019 through September 2,  
6 2019.

7           70.     FORTHCOMING THIRD SET OF TORT CLAIMS -- PLAINTIFFS intend to  
8 file additional claims with the CITY for events from September 16, 2019 to present.  
9 PLAINTIFFS acknowledge that these additional claims have not yet been served on the CITY  
10 and thus, reserve the right to amend this Complaint accordingly, based on the CITY’s response,  
11 if any.

12           71.     PLAINTIFFS’ goal in this suit is a positive one: to make the CITY’s golf courses  
13 fully accessible to persons with mobility disabilities similar to MR. NEVAREZ and their  
14 companions.

15  
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18                   **FIRST CLAIM:**  
19                   **VIOLATION OF THE ADA, TITLE II**  
20                   **[42 USC §§ 12201 *et seq.*]**  
21                   **(As to PLAINTIFFS ABDUL NEVAREZ and PRISCILLA NEVAREZ**  
22                   **against all defendants)**

23           72.     PLAINTIFFS plead and incorporate by reference, as if fully set forth hereafter,  
24 the allegations contained in all paragraphs of this Complaint and incorporate them herein as if  
25 separately pled.

26           73.     Effective January 26, 1992, MR. NEVAREZ was entitled to the protections of the  
27 “Public Services” provision of Title II of the Americans with Disabilities Act of 1990. Title II,  
28 Subpart A prohibits discrimination by any “public entity”, including any state or local  
government, as defined by 42 U.S.C. § 12131.



1           74. Pursuant to Title II of the ADA (42 U.S.C. § 12132), no qualified individual  
2 with a disability shall, by reason of such disability, be excluded from participation in or be  
3 denied the benefits of the services, programs or activities of a public entity, or be subjected to  
4 discrimination by any such entity. MR. NEVAREZ was at all times relevant herein a qualified  
5 individual with a disability as defined by the ADA.

6           75. Public entity defendant CITY has failed in its responsibilities under Title II to  
7 provide its services, programs and activities in a full and equal manner to disabled persons as  
8 described herein, including without limitation: failing to ensure that the golf courses owned,  
9 operated, and/or leased by the CITY are properly accessible to and usable by mobility disabled  
10 persons; failing to ensure that related public facilities and public accommodations, as described  
11 herein, are accessible to and usable by mobility disabled persons; failing to remove known  
12 architectural barriers at the subject facilities so as to make the facilities accessible to and useable  
13 by mobility disabled persons; failing to comply with requirements and standards in effect at the  
14 time of alterations or construction of its golf courses; failing to implement and maintain policies  
15 at its golf courses to ensure that its golf courses are accessible to and usable by mobility disabled  
16 persons; charging more for its “designated accessible” golf courses; and/or failing to modify its  
17 programs, services and activities to make them accessible to and usable by mobility disabled  
18 persons, including MR. NEVAREZ. As a proximate result of the CITY’s actions and omissions,  
19 PLAINTIFFS were discriminated against in violation of Title II of the ADA and of the  
20 regulations adopted to implement the ADA. PLAINTIFFS suffered damages, compensable under  
21 Title II for intentional acts of the CITY, including deliberate indifference, and have suffered  
22 physical, mental and emotional damages, including difficulty, discomfort or embarrassment.

23           76. Under the regulation governing “[g]eneral prohibitions against discrimination,”  
24 public entities are prohibited from “providing any aid, benefit, or service” that “afford[s] a  
25 qualified individual with a disability an opportunity to participate in or benefit from the aid,  
26 benefit, or service that is *not equal* to that afforded others.” 28 C.F.R. § 35.130(b)(1)(ii)  
27 (emphasis added); *see also* 28 C.F.R. § 41.51 (Rehabilitation Act regulations). Public entities are  
28 also prohibited from utilizing “methods of administration ... [t]hat have the purpose or effect of

1 defeating or substantially impairing accomplishment of the objectives of the public entity's  
2 program with respect to individuals with disabilities[.]” 28 C.F.R. § 35.130(b)(3)(ii). Public  
3 entities are required to “make reasonable modifications in policies, practices, or procedures when  
4 the modifications are necessary to avoid discrimination on the basis of disability, unless the  
5 public entity can demonstrate that making the modifications would fundamentally alter the  
6 nature of the service, program, or activity.” *Id.* § 35.130(b)(7) (emphasis added). The United  
7 States Court of Appeals for the Ninth Circuit Court has been clear that a public entity may  
8 violate the ADA even if no regulation expressly proscribes its particular conduct. *Barden v. City*  
9 *of Sacramento*, 292 F.3d 1073, 1076-78 (9th Cir. 2002) (applying Title II to sidewalks even  
10 though no implementing regulations specifically addressed sidewalks).

11 77. On information and belief, to the date of filing this Complaint the CITY’s golf  
12 courses continue to be inaccessible for safe and independent use by physically disabled persons  
13 such as MR. NEVAREZ. MR. NEVAREZ is unable, so long as such acts and omissions of the  
14 CITY continue, to achieve equal access to and use of these golf courses and cannot return to  
15 properly use and enjoy them until they are made properly accessible to mobility disabled  
16 persons. MR. NEVAREZ alleges that he intends to do so, once legally-required access has been  
17 provided. The acts of the CITY have proximately caused and will continue to cause irreparable  
18 injury to PLAINTIFFS if not enjoined by this Court.

19 78. Plaintiff PRISCILLA NEVAREZ seeks relief pursuant to remedies set forth in 42  
20 U.S.C. § 12203. She has been discriminated against in her attempts to assist MR. NEVAREZ  
21 with golfing at the CITY’s golf courses. In addition, she has herself experienced discrimination  
22 as a result of struggling to assist MR. NEVAREZ with physical access and policy barriers that  
23 limit or deny access to the CITY’s golf programs, services, activities and facilities, including but  
24 not limited to architectural and policy barriers that limit access to Lincoln Park, TPC Harding,  
25 and Fleming.

26 79. Per § 12133 of the ADA, as a result of such discrimination, in violation of §  
27 12132 of the ADA, PLAINTIFFS are entitled to the remedies, procedures and rights set forth in  
28 Section 505 of the Rehabilitation Act of 1973 (29 USC § 794a).

WHEREFORE, PLAINTIFFS request relief as outlined below.

**SECOND CAUSE OF ACTION:  
VIOLATION OF THE REHABILITATION ACT OF 1973  
[29 U.S.C. § 794]  
(As to Plaintiff ABDUL NEVAREZ only against all defendants)**

80. PLAINTIFFS replead and incorporate by reference, as if fully set forth again herein, the allegations contained in all paragraphs of this Complaint and incorporate them herein as if separately repled.

81. Upon information and belief, at all times relevant to this action, the CITY, Department, and DOES 1-5 were recipients of federal funding within the meaning of the Rehabilitation Act of 1973. As recipients of federal funds, they are required to reasonably accommodate persons with disabilities in their facilities, programs, and activities.

82. MR. NEVAREZ is a qualified individual with a disability as defined in the Rehabilitation Act of 1973. 29 U.S.C. § 705.

83. By its policies and practices of discriminating against and failing to reasonably accommodate patrons with mobility disabilities, the CITY and the Department violated Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794.

84. As a result of the CITY's and the Department's discrimination and failure to provide reasonable accommodations, MR. NEVAREZ and others with disabilities do not have equal access to the activities, programs, and services of the CITY's golf courses for which they are otherwise qualified.

85. MR. NEVAREZ's injuries are ongoing so long as the CITY and the Department do not modify their policies and procedures and provide fully accessible golf courses and related facilities for MR. NEVAREZ and other persons with similar mobility disabilities.

WHEREFORE, PLAINTIFFS requests relief as outlined below.

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**THIRD CAUSE OF ACTION:  
VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 11135  
(As to Plaintiff ABDUL NEVAREZ only against all defendants)**

86. PLAINTIFFS plead and incorporate by reference, as if fully set forth again herein, the allegations contained in all paragraphs of this Complaint and incorporates them herein as if separately repled.

87. Upon information and belief, the CITY, the Department, the CITY's golf program, and DOES 1-5 receive financial assistance from the State of California. MR. NEVAREZ is a person with a disability within the meaning of California Government Code section 11135.

88. The CITY, the Department, and the CITY's golf program denied MR. NEVAREZ full access to the benefits of their programs and activities for which they receive financial assistance from the State of California, and unlawfully subjected MR. NEVAREZ and other persons with disabilities to discrimination within the meaning of California Government Code section 11135(a) based on their disabilities.

89. MR. NEVAREZ's injuries are ongoing so long as the CITY, the Department, and the CITY's golf program do not modify their policies and procedures and provide fully accessible golf courses and related facilities for MR. NEVAREZ and other persons with similar mobility disabilities.

WHEREFORE, PLAINTIFFS request relief as outlined below.

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**FOURTH CLAIM:  
VIOLATION OF UNRUH CIVIL RIGHTS ACT  
[Cal. Civil Code §§ 51 *et seq.*]  
(As to PLAINTIFFS ABDUL NEVAREZ and PRISCILLA NEVAREZ  
against all defendants)**

90. PLAINTIFFS replead and incorporate by reference, as if fully set forth again herein, the allegations contained in all paragraphs of this Complaint and incorporate them herein by reference as if separately replied hereafter.

91. The Unruh Civil Rights Act, California Civil Code 51(b), provides that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

92. The CITY is a business establishment within the meaning of the Unruh Civil Rights Act. The CITY is an owner and operator of a business establishment.

93. The CITY violated the Unruh Civil Rights Act by its acts and omissions, as follows:

- A. Failure to construct and/or alter Lincoln Park – and, upon information and belief, other CITY golf courses -- in compliance with state building code and state architectural requirements;
- B. Failure to modify policies and procedures as necessary to ensure PLAINTIFFS full and equal access to the accommodations, advantages, facilities, privileges, and/or services of the CITY's golf courses; and
- C. Violation of the ADA, a violation of which is a violation of the Unruh Civil Rights Act. Cal. Civil Code § 51(f).

1           94.     PLAINTIFFS have experienced numerous physical barriers to access at Lincoln  
2 Park, TPC Harding, and Fleming; as well as in the policies and procedures of the golf courses;  
3 all of which have caused them major difficulty, discomfort and embarrassment. PLAINTIFFS  
4 suffered physical, mental and emotional damages, including statutory and compensatory  
5 damages, according to proof.  
6

7           95.     Further, on information and belief, the CITY's golf courses and their respective  
8 premises are also illegally inaccessible in multiple other respects. The barriers to access  
9 described in this Complaint are listed without prejudice to PLAINTIFFS citing additional  
10 barriers to access after inspection by PLAINTIFFS' access consultant(s)/expert(s), per the Ninth  
11 Circuit's standing standards under *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir. 2008) and  
12 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011) (*en banc*). These barriers to  
13 access render the CITY's golf courses and their respective premises inaccessible to and unusable  
14 by persons with mobility disabilities. All golf courses must be brought into compliance with all  
15 applicable federal and state code requirements, according to proof. PLAINTIFFS pray for leave  
16 to amend this Complaint to obtain full injunctive relief as to those barriers that limit or deny full  
17 and equal access to persons with mobility disabilities similar to MR. NEVAREZ's.  
18

19           96.     Further, each violation of the ADA (as pled in the First Claim, *supra*, the contents  
20 of which are repled and incorporated herein as if separately repled), also constitutes a separate  
21 and distinct violation of California Civil Code § 51(f), thus independently justifying an award of  
22 damages and injunctive relief pursuant to California law, including but not limited to Civil Code  
23 § 52(a).  
24

25           97.     With respect to the CITY's violations of the Unruh Civil Rights Act that are not  
26 predicated on violations of the ADA, the CITY's behavior was intentional: it was aware of  
27  
28

1 and/or was made aware of its duties to refrain from establishing discriminatory policies and  
2 barriers that prevent persons with mobility disabilities like MR. NEVAREZ's from obtaining full  
3 and equal access to the CITY's golf courses. The CITY's discriminatory practices and/or policies  
4 that deny full enjoyment of its golf courses to persons with physical disabilities indicates actual  
5 and implied malice and conscious disregard for the rights of MR. NEVAREZ and other similarly  
6 disabled individuals. PLAINTIFFS complained on several occasions to the CITY, to no avail.  
7 Accordingly, the CITY has engaged in willful affirmative misconduct in violating the Unruh  
8 Civil Rights Act.  
9

10  
11 98. On information and belief, the access features of the CITY's golf courses and its  
12 policies and procedures have not been improved since PLAINTIFFS' most recent attempts to  
13 golf at a CITY golf course. PLAINTIFFS' injuries are ongoing so long as the CITY does not  
14 modify its policies and procedures and provide fully-accessible facilities for PLAINTIFFS and  
15 other persons with mobility disabilities similar to MR. NEVAREZ's.  
16

17 99. At all times herein mentioned, the CITY knew, or in the exercise of reasonable  
18 diligence should have known, that its barriers, policies and practices at its facilities violated  
19 disabled access requirements and standards and had a discriminatory impact upon PLAINTIFFS  
20 and upon other persons with mobility disabilities similar to MR. NEVAREZ, but the CITY failed  
21 to rectify the violations, and presently continues a course of conduct in maintaining barriers that  
22 discriminate against MR. NEVAREZ, similarly-situated disabled persons, and their companions.  
23

24 WHEREFORE, PLAINTIFFS request relief as outlined below.

25 **PRAYER**

26 1. PLAINTIFFS have no adequate remedy at law to redress the wrongs suffered as  
27 set forth in this Complaint. PLAINTIFFS have suffered and will continue to suffer irreparable  
28

1 injury as a result of the unlawful acts, omissions, policies, and practices of the CITY as alleged  
2 herein, unless PLAINTIFFS are granted the relief they request. PLAINTIFFS and the CITY have  
3 an actual controversy and opposing legal positions as to the CITY's violations of the laws of the  
4 United States and the State of California. The need for relief is critical because the rights at issue  
5 are paramount under the laws of the United States and the State of California.  
6

7 WHEREFORE, PLAINTIFFS ABDUL NEVAREZ and PRISCILLA NEVAREZ pray  
8 for judgment and the following specific relief against the CITY:

9 2. Issue a declaratory judgment that the CITY's actions, omissions, and failures,  
10 including but limited to: failing to provide and maintain safe and accessible golf carts for use by  
11 disabled patrons, failing to implement accessible tee time booking policies and procedures,  
12 failing to construct and/or alter CITY golf courses in compliance with requirements and  
13 standards in effect at the time of alterations and/or new construction, failing remove barriers  
14 where readily achievable, and failing to make reasonable modifications in policy and practice for  
15 PLAINTIFFS and other persons with similar mobility disabilities, violate the rights of  
16 PLAINTIFFS and other similarly situated persons under 42 U.S.C. §§ 12101 *et seq.* and the  
17 regulations promulgated thereunder and California Civil Code §§ 51 *et seq.*

18 3. Issue an order enjoining the CITY, its agents, officials, employees, and all persons  
19 and entities acting in concert with it:

- 20 a. From continuing the unlawful acts, conditions, and practices described in this  
21 Complaint;  
22 b. To provide reasonable accommodation for persons with disabilities in all its  
23 programs, services and activities at its golf courses;  
24 c. To ensure that persons with disabilities are not denied the benefits of, or  
25 participation in, programs, services, and activities at its golf courses;  
26  
27  
28



- d. To modify the above-described facilities to provide full and equal access to persons with mobility disabilities, including without limitation the provision of a safe, accessible golf cart for use by persons with disabilities;
- e. To remove all architectural barriers at CITY golf courses;
- f. To maintain such accessible facilities once they are provided;
- g. To train CITY employees and agents in how to accommodate the rights and needs of physically disabled persons at the CITY's golf courses;
- h. To implement nondiscriminating protocols, policies, and practices for accommodating persons with mobility disabilities at CITY golf courses.

4. Retain jurisdiction over the CITY until the Court is satisfied that the CITY's unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur, and cannot recur;

5. Award to PLAINTIFFS all appropriate damages, including but not limited to statutory, compensatory, and treble damages in an amount within the jurisdiction of the Court, all according to proof;

6. Award to PLAINTIFFS all reasonable statutory attorney fees, litigation expenses, and costs of this proceeding as provided by law, including but not limited to the ADA, 42 U.S.C. § 12205; the Unruh Civil Rights Act, California Civil Code § 52; and "public interest" attorney fees, litigation expenses and costs pursuant to the provisions of California Code of Civil Procedure § 1021.5.

7. Award prejudgment interest pursuant to California Civil Code § 3291;

8. Interest on monetary awards as permitted by law; and

9. Grant such other and further relief as this Court may deem just and proper.

Dated: March 4, 2020

PEIFFER WOLF CARR & KANE

/s/ Catherine Cabalo  
BY: CATHERINE CABALO, Esq.

Attorneys for PLAINTIFFS  
ABDUL NEVAREZ and PRISCILLA NEVAREZ

**DEMAND FOR JURY**

PLAINTIFFS hereby demand a jury for all claims for which a jury is permitted.

Dated: March 4, 2020

PEIFFER WOLF CARR & KANE

/s/ Catherine Cabalo  
BY: CATHERINE CABALO, Esq.  
Attorneys for PLAINTIFFS  
ABDUL NEVAREZ and PRISCILLA NEVAREZ